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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TARYN MANNING, an)	CV 15-05762 RSWL (PJWx)
individual,)	
)	ORDER re: DEFENDANTS'
Plaintiff,)	MOTION TO DISMISS
)	COMPLAINT FOR
v.)	DECLARATORY JUDGMENT
)	[14]
CAROLINE DIMECH, a/k/a/)	
"CLINE MAYO", an)	
individual; FIERCE FLIX, a)	
Pennsylvania Limited)	
Liability Company; and DOES)	
1 through 10, inclusive,)	
)	
Defendants.)	

Currently before the Court is Defendants Caroline Dimech ("Dimech") and Fierce Flix's (collectively "Defendants") Motion to Dismiss Complaint for Declaratory Judgment [14]. Defendants move the Court to dismiss Plaintiff Taryn Manning's ("Plaintiff") Complaint for declaratory judgment in its entirety. The Court, having considered all arguments presented, **NOW FINDS AND RULES AS FOLLOWS:**

1 The Court **GRANTS** Defendants' Motion to Dismiss
2 Complaint for Declaratory Judgment [14].

3 **I. BACKGROUND**

4 **A. Factual Background**

5 This action arises out of a dispute between
6 Plaintiff and Defendants over a trailer for the yet-to-
7 be produced film at issue entitled "Droppers."

8 Beginning in approximately 2007, Plaintiff partnered
9 with Defendant Dimech to produce the motion picture
10 tentatively titled "Droppers" (hereinafter "the Film.")

11 Compl. ¶ 1. In February 2015, Plaintiff and Dimech
12 produced a trailer for "Droppers" (hereinafter "the
13 Trailer"). Id. at ¶ 2. Plaintiff was involved in the
14 creation of the Trailer and starred in the Trailer.

15 Id. Together, Plaintiff and Defendants produced the
16 Trailer. Id. After the Trailer was completed, the
17 business relationship between Plaintiff and Dimech
18 ended. Id. Dimech has since threatened litigation
19 against Plaintiff, alleging that Plaintiff infringed
20 upon a copyright belonging to Defendants by releasing
21 the Trailer without Defendants' approval. Id.
22 Defendants threatened litigation unless Plaintiff gave
23 in to certain monetary demands. Id.

24 Plaintiff now seeks a judicial declaration of the
25 following: (1) "[T]he parties' respective rights and
26 obligations with respect to the copyright allegedly
27 belonging to Defendants;" (2) "[T]hat she is not
28 infringing, has not infringed, and is not liable for

1 infringing any valid copyright owned by Defendants,
 2 either directly, or by inducing others to infringe, or
 3 by contributing to the infringement of others;" (3)
 4 "Defendants do not have an interest in the purported
 5 copyright to the motion picture screenplay tentatively
 6 titled 'Droppers' sufficient to confer standing on them
 7 to pursue claims of infringement." Id. at ¶¶ 15-17.

8 **B. Procedural History**

9 Plaintiff filed her Complaint against Defendants on
 10 July 29, 2015 [1]. On September 11, 2015, Defendants
 11 filed the present Motion to Dismiss [14]. On October
 12 27, 2015, Plaintiff filed her Opposition to Defendants'
 13 Motion to Dismiss [18]. On November 3, 2015,
 14 Defendants filed their Reply [19].

15 **II. DISCUSSION**

16 **A. Legal Standards**

17 **1. Motion to Dismiss Pursuant to Rule 12(b)(6)**

18 Federal Rule of Civil Procedure 12(b)(6) allows a
 19 party to move for dismissal of one or more claims if
 20 the pleading fails to state a claim upon which relief
 21 can be granted. Fed. R. Civ. P. 12(b)(6). Dismissal
 22 can be based on "the absence of sufficient facts
 23 alleged under a cognizable legal theory." Balistreri
 24 v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
 25 1990). A complaint "should not be dismissed under Rule
 26 12(b)(6) 'unless it appears beyond doubt that the
 27 plaintiff can prove no set of facts in support of his
 28 claim which would entitle him to relief.'" Id. (citing

1 Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). In a
2 Rule 12(b)(6) motion to dismiss, a court must presume
3 all factual allegations of the complaint to be true and
4 draw all reasonable inferences in favor of the non-
5 moving party. Klarfeld v. United States, 944 F.2d 583,
6 585 (9th Cir. 1991).

7 "While a complaint attacked by a Rule 12(b)(6)
8 motion to dismiss does not need detailed factual
9 allegations, a plaintiff's obligation to provide the
10 'grounds' of his 'entitle[ment] to relief' requires
11 more than labels and conclusions, and a formulaic
12 recitation of a cause of action's elements will not
13 do." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555
14 (2007) (internal citation omitted). A complaint must
15 "contain sufficient factual matter, accepted as true,
16 to state a claim to relief that is plausible on its
17 face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
18 (internal quotation marks omitted).

19 **B. Analysis**

20 1. Defendants' failure to comply with Local Rule
21 11-1.

22 Local Rule 11-1 provides: "All documents, except
23 declarations, shall be signed by the attorney for the
24 party or the party appearing pro se. The name of the
25 person signing the document shall be clearly typed
26 below the signature line." L.R. 11-1. Here,
27 Defendants' failed to sign their Motion to Dismiss
28 [14].

1 It is well settled that a district court may
2 dismiss an action "based on a party's ... failure to
3 comply with federal or local rules of civil procedure."
4 Ghazali v. Moran, 26 F.3d 52, 53-54 (9th Cir. 1995).
5 However, a court may in its discretion elect to
6 disregard such deficiencies, such as failure to sign a
7 moving paper, "if it sees fit." See Gomez v.
8 Macdonald, 2014 WL 1330528, at *2 (C.D. Cal. March 31,
9 2014). It is clear to this Court, from the face of
10 Defendants' Motion and upon review of Defendants'
11 Reply, that Defendants' failure to comply with Local
12 Rule 11-1 was inadvertent. The Court thus hereby
13 exercises its discretion, out of considerations of
14 fairness and judicial economy, to nonetheless consider
15 Defendants' Motion on the merits.

16 2. Defendants' failure to comply with Local Rule
17 7-3.

18 Local Rule 7-3 requires that "counsel contemplating
19 the filing of any motion shall first contact opposing
20 counsel to discuss thoroughly, preferably in person,
21 the substance of the contemplated motion and any
22 potential resolution." L.R. 7-3. The Local Rule
23 further requires that this conference shall take place
24 at least seven (7) days prior to the filing of the
25 motion. Id. Here, Defendants' Motion [14] was filed
26 without the parties engaging in a "meet and confer" as
27 required by Local Rule 7-3.

28 This Court may, in its discretion, refuse to

1 consider Defendants' Motion for failure to comply with
2 Local Rule 7-3. See, e.g., Reed v. Sandstone
3 Properties, L.P., No. CV 12-05021 MMM (VBKx), 2013 WL
4 1344912, at *6 (C.D. Cal. Apr. 2, 2013). In her
5 Opposition, Plaintiff neither demonstrates that
6 Defendants' Motion is "unnecessary," nor does Plaintiff
7 show that she has suffered prejudice as a result of the
8 absence of a conference. Rather, Plaintiff merely
9 states that if the parties' would have conferred prior
10 to Defendants filing their Motion, Plaintiff's counsel
11 would have informed Defendants' counsel of the current
12 state of the law at issue and, as such, "[t]his entire
13 exercise in motion practice could thus have been
14 avoided." Opp'n 3:11-14. Thus, as there appears to be
15 no prejudice to Plaintiff in considering Defendants'
16 motion on the merits,¹ the Court hereby exercises its
17 discretion to do so. Reed, at *6; See Thomas v. U.S.
18 Foods, Inc., No. 8:12-cv-1221-JST (JEMx), 2012 WL
19 5634847, at *1 n. 1 (C.D. Cal. Nov. 14, 2012)
20 (considering the plaintiff's motion despite failure to
21 comply with Local Rule 7-3). However, the Court
22 admonishes Plaintiff of the seriousness of its failure
23 to follow the Local Rules and cautions Plaintiff to
24 fully comply with all local rules in the filing of any

26 ¹Defendants discuss and evidence in their Reply that the
27 parties have communicated extensively prior to the filing of this
28 Motion, and it seemed unlikely that the parties would have
resolved the substance of this Motion in the requisite Rule 7-3
meeting. Reply 6:6-15; see Reply Ex. A.

1 future motions.

2 3. Plaintiff's Complaint is dismissed for failure
3 to state a claim upon which relief can be
4 granted.

5 a. *Defendants' Motion will not be construed*
6 *as a motion for summary judgment or a*
7 *motion to dismiss for lack of subject*
8 *matter jurisdiction.*

9 As a preliminary matter, this Court will clarify
10 the nature and purpose of a Rule 12(b)(6) motion to
11 dismiss. The question presented by a motion to dismiss
12 is not whether the plaintiff will ultimately prevail in
13 the action, but whether the plaintiff is entitled to
14 offer evidence in support of its claim. Swierkiewica
15 v. Sorema N.A., 534 U.S. 506, 511 (2002). "When
16 evaluating a Rule 12(b)(6) motion, the district court
17 must accept all material allegations in the complaint
18 as true, and construe them in the light most favorable
19 to the non-moving party." Chubb Custom Ins. Co. v.
20 Space Sys., 710 F.3d 946, 956 (9th Cir. 2013) (citing
21 Moyo v. Gomez, 32 F.3d 1382, 1384 (9th Cir. 1994)). In
22 keeping with that instruction, with few exceptions, "a
23 district court may not consider any material beyond the
24 pleadings" when ruling on a Rule 12(b)(6) motion. Lee
25 v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir.
26 2001) (quoting Branch v. Tunnell, 14 F.3d 449, 453 (9th

1 Cir. 1994)).² "[I]f a district court considers evidence
2 outside the pleadings, it must normally convert the
3 12(b)(6) motion into a Rule 56 motion for summary
4 judgment, and it must give the nonmoving party an
5 opportunity to respond." Richie, 342 F.3d at 907.

6 As the aforementioned exceptions do not apply to
7 the present case, this Court declines to construe
8 Defendants' Motion to Dismiss [14] as a motion for
9 summary judgment at this early juncture. Here,
10 Defendants' Motion to Dismiss rightfully focuses on the
11 sufficiency of Plaintiff's Complaint. Defendants'
12 Motion makes no reference to or arguments against
13 papers outside of the pleadings. Rather, only the
14 Plaintiff seeks to use moving papers as support for the
15 sufficiency of her Complaint. Plaintiff provides
16 extensive new argument and evidence in her Opposition.
17 However, this Court will not construe Defendants'
18 Motion as a motion for summary judgment, and as such
19 declines to consider the new evidence and allegations
20

21 ²The two exceptions, both inapplicable here, are as follows:
22 "First, a court may consider 'material which is properly
23 submitted as part of the complaint' on a motion to dismiss
24 without converting the motion to dismiss into a motion for
25 summary judgment." Lee v. City of Los Angeles, 250 F.3d 668 (9th
26 Cir. 2001) (quoting Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir.
27 1994) (overruled on other grounds)). "If the documents are not
28 physically attached to the complaint, they may be considered if
the documents' 'authenticity ... is not contested' and 'the
plaintiff's complaint necessarily relies' on them. Id. (quoting
Parrino v. FHP, Inc., 146 F.3d 699, 705-06 (9th Cir. 1998)).
"Second, under Fed. R. Evid. 201, a court may take judicial
notice of 'matters of public record.' Id. (quoting Mack v. South
Bay Beer Distrib., 798 F.2d 1279, 1282 (9th Cir. 1986)).

1 brought forth in Plaintiff's Opposition and
2 accompanying exhibits.

3 Further, Plaintiff's argument that Defendants'
4 12(b)(6) Motion is really an "improperly styled" motion
5 to dismiss for lack of subject matter jurisdiction is
6 not persuasive. See Opp'n 7:24-8:4. Defendants'
7 Motion seeks to dismiss Plaintiff's Complaint for
8 failure to state a claim under Rule 12(b)(6) on three
9 grounds: (1) "Plaintiff has no standing to pursue her
10 claim;" (2) "Plaintiff's claim is not ripe and there is
11 no actual controversy to be adjudicated;" and (3)
12 "there is no subject matter jurisdiction, in that
13 Plaintiff does not allege that Defendants have obtained
14 a Copyright Registration Certificate so that they could
15 initiate a copyright infringement action, as required
16 by 17 U.S.C. §§ 411 and 501(b)." Mot. to Dismiss 2:3-
17 15. Defendant properly brought these arguments under a
18 Rule 12(b)(6) motion to dismiss, and thus this Court
19 will only consider the sufficiency of Plaintiff's
20 Complaint for purposes of the present Motion.

21 b. *Plaintiff's Complaint fails to state a*
22 *claim upon which relief may be granted.*

23 The Declaratory Judgment Act provides that "[i]n a
24 case of actual controversy within its jurisdiction . .
25 . any court of the United States . . . may declare the
26 rights and other legal relations of any interested
27 party seeking such declaration, whether or not further
28 relief is or could be sought." 28 U.S.C. § 2201(a).

1 However, while the Declaratory Judgment Act
2 "created a new procedural mechanism for removing the
3 threat of impending litigation, it did not expand the
4 jurisdiction of federal courts." Shell Gulf of Mexico
5 Inc. v. Center for Biological Diversity, 771 F.3d 632,
6 634 (9th Cir. 2014) (quoting Skelly Oil Co. v. Phillips
7 Petroleum Co., 339 U.S. 667, 671, 70 S.Ct. 876, 94
8 L.Ed. 1194 (1950)). A court may only hear a
9 declaratory judgment action if the claim presents a
10 justiciable case or controversy. See Principal Life
11 Insurance Co. v. Robinson, 394 F. 3d 665 (9th Cir.
12 2005). "To determine whether a declaratory judgment
13 action presents a justiciable case or controversy,
14 courts consider 'whether the facts alleged, under all
15 the circumstances, show that there is a substantial
16 controversy, between parties having adverse legal
17 interests, of sufficient immediacy and reality to
18 warrant the issuance of a declaratory judgment.'" Id.
19 (quoting Md. Cas. Co. v. Pac. Coal & Oil Co., 312 U.S.
20 270, 273 (1941)).

21 i. *Plaintiff's claim is not justiciable.*

22 1. Plaintiff does not allege an
23 "actual controversy" within the
24 meaning of the Declaratory
25 Judgment Act.

26 "To establish that a particular declaratory action
27 presents an actual case or controversy, a party is
28 required to show that, under all the circumstances of

1 the case, there is a substantial controversy between
2 parties having adverse legal interests, and the
3 controversy is of sufficient immediacy and reality to
4 warrant declaratory relief." Hal Roach, 896 F.2d at
5 1555.

6 Plaintiff's Complaint does not present an "actual
7 case or controversy" within the meaning of the
8 Declaratory Judgment Act, and as such, should be
9 dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

10 Plaintiff's Complaint neither (1) adequately alleges
11 that the parties have "adverse legal interests" nor (2)
12 adequately alleges that the controversy is of
13 "sufficient immediacy and reality to warrant
14 declaratory relief." In her Complaint, Plaintiff
15 merely states: "On June 30, 2015, Defendants threatened
16 litigation against Plaintiff, asserting that Plaintiff
17 is infringing upon Defendants' claimed copyright in the
18 screenplay for the motion picture tentatively titled
19 'Droppers.' On July 25, 2015, Defendants again
20 threatened imminent litigation based on this purported
21 copyright infringement, unless Plaintiff gave in to
22 certain demands. As an actual controversy exists by
23 way of the Defendants' credible threat of immediate
24 litigation and demand for monetary compensation,
25 Plaintiff seeks relief from this Court." Compl. ¶ 10.
26 Plaintiff then adds further vague allegations which
27 lend no more support to her declaratory judgment claim:
28 "Plaintiff is informed and believes that Defendants

1 claim that they own and have standing to pursue claims
2 for infringement of an alleged copyright in . . . and
3 that Plaintiff has infringed such copyright by using
4 copyrighted material without Defendants' permission."
5 Id. at ¶ 11.

6 Plaintiff does not further expound upon why
7 Defendants' threat may be "credible," including whether
8 Defendants even hold a valid copyright registration for
9 "Droppers" upon which they could sue Plaintiff.

10 Plaintiff does not further detail whether or how
11 litigation may have actually been "imminent" prior to
12 her filing a declaratory judgment claim. Rather,
13 Plaintiff simply states that "an actual controversy
14 exists by way of the Defendants' credible threat of
15 immediate litigation." Compl. ¶ 11. Plaintiff does
16 not support this contention with any evidence or
17 supporting factual allegations. In fact, Plaintiff's
18 own Complaint shows that Defendants have previously
19 threatened imminent litigation, and have yet to follow
20 through on the initial threat. See id. at ¶ 10.

21 Plaintiff has failed to show in her Complaint, as
22 is her burden, that under all the circumstances of the
23 case, there is a "substantial controversy between
24 parties having adverse legal interests, and the
25 controversy is of sufficient immediacy and reality to
26 warrant declaratory relief." Hal Roach, 896 F.2d at
27 1555; see Principal Life Insurance Co., 394 F. 3d 665.
28 Accordingly, this Court finds that Plaintiff has not

1 adequately alleged a claim under the Declaratory
2 Judgment Act. As such, Plaintiff's Complaint is
3 dismissed for failure to state a claim upon which
4 relief may be granted. Fed. R. Civ. P. 12(b)(6).

5 2. The dispute is not "ripe for
6 adjudication" and this Court does
7 not have subject matter
8 jurisdiction to hear the matter.

9 "If a case is not ripe for review, then there is no
10 case or controversy, and the court lacks subject-matter
11 jurisdiction." Principal Life Insurance, 394 F.3d at
12 669 (citing American States Ins. Co. v. Kearns, 15 F.3d
13 142, 143 (9th Cir. 1994)). Whether an action is ripe
14 for review requires the court to evaluate "(1) the
15 fitness of the issues for judicial decision; and (2)
16 the hardship to the parties of withholding court
17 consideration." Id. at 670 (citing Abbott Labs. v.
18 Gardner, 387 U.S. 136, 148-49 (1967), overruled on
19 other grounds by Califano v. Sanders, 430 U.S. 99, 105
20 (1977)). In Western Oil & Gas Ass'n v. Sonoma County,
21 the Ninth Circuit held that the hardship element of the
22 Abbott Labs standard is not met unless a litigant shows
23 that "withholding review would result in 'direct and
24 immediate' hardship and would entail more than possible
25 financial loss." 905 F.2d 1287, 1291 (9th Cir. 1990).

26 The Copyright Act requires that *before* any
27 institution of an action for copyright infringement,
28 there must be a copyright registered in compliance with

1 sections 411 and 501(b). 17 U.S.C. §§ 411, 501(b) ("no
2 civil action for infringement of the copyright in any
3 United States work shall be instituted until
4 preregistration or registration of the copyright claim
5 has been made in accordance with this title."). Again,
6 Plaintiff does not allege anywhere in her Complaint
7 that Defendants have registered the Film or the Trailer
8 for copyright. Thus, even if Defendants wished to
9 pursue a claim for copyright infringement against
10 Plaintiff, Plaintiff has not shown the Court that
11 Defendants could in fact bring imminent litigation.
12 Ultimately, Plaintiff has not shown this Court that the
13 issue is fit for judicial decision at this juncture.
14 Further, Plaintiff has not shown, in accordance with
15 the Ninth Circuit's standard discussed above, that she
16 will suffer direct and immediate hardship entailing
17 more than possible financial loss. This Court finds
18 that Plaintiff's claim is not "ripe" for adjudication.
19 "If a case is not ripe for review, then there is no
20 case or controversy, and the court lacks subject-matter
21 jurisdiction" to hear the matter. Principal Life
22 Insurance, 394 F.3d at 669. Accordingly, Plaintiff's
23 Complaint is dismissed for failure to state a claim
24 upon which relief may be granted.

25 ii. *Plaintiff's Complaint should be*
26 *dismissed because there is no*
27 *possibility of "practical enforcement"*
28 *of her declaratory judgment claim.*

1 "A mere demand for declaratory relief does not by
2 itself establish a case or controversy as necessary to
3 confer subject matter jurisdiction. Thus, when the
4 remedy sought is a mere declaration of law without
5 implications for practical enforcement on the parties,
6 the case is properly dismissed." Moore's Federal
7 Practice, 57.22[5].

8 As discussed above, Plaintiff does not allege
9 anywhere in the Complaint that Defendants have a
10 registered copyright for the Film or the Trailer.
11 Nonetheless, Plaintiff seeks a judicial declaration "of
12 the parties' respective rights and obligations with
13 respect to the copyright," "that she is not infringing,
14 has not infringed, and is not liable for infringing"
15 the copyright, and that "Defendants do not have an
16 interest in the purported copyright." Compl. ¶¶ 15-17.
17 If the Court were to issue such declarations, the
18 Court's order would have no practical effect if a valid
19 copyright does not yet, in fact, exist. In short,
20 Plaintiff's declaratory judgment claim is premature and
21 if entered, possibly practically unenforceable.

22 Accordingly, the Court **GRANTS** Defendants' Motion to
23 Dismiss Complaint for Declaratory Judgment [14], and
24 affords Plaintiff no leave to amend her Complaint.
25 This Court finds that an amended declaratory judgment
26 claim, brought under these same circumstances, would
27 similarly be premature and unwarranted.

28 //

1 **III. CONCLUSION**

2 The Court hereby **GRANTS** Defendants' Motion to
3 Dismiss Complaint for Declaratory Judgment [14],
4 without leave to amend.

5
6 **IT IS SO ORDERED.**

7 DATED: December 30, 2015

s/ RONALD S.W. LEW
HONORABLE RONALD S.W. LEW
Senior U.S. District Judge